



New South Wales
Council for Civil Liberties

**NSW REVIEW OF POLICE
OVERSIGHT**

By Mr Andrew Tink AM

NSWCCL Submission

12 July 2015

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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NSW COUNCIL FOR CIVIL LIBERTIES SUBMISSION TO THE NSW REVIEW OF POLICE OVERSIGHT

1. Introduction

The NSW Council for Civil liberties (NSWCCL) welcomes the opportunity to make a submission to the Review of Police Oversight by Mr Andrew Tink AM. We appreciated the opportunity, along with other community organisations, for a preliminary discussion of the issue and the review process with Mr Tink in June.

Independent and effective police oversight is an issue of great significance and growing urgency in NSW. There are major, well documented problems with the current system -especially in relation to the review of police critical incidents. The management of complaints in NSW is also in need of reform.

NSWCCL receives complaints from the public in relation to police actions and processes and actively monitors and comments known police critical incidents. From this perspective, NSWCCL has long argued the case for an independent review process for police critical incidents and serious misconduct. We made a detailed submission to the Ten Year Review by the Ombudsman and Police Integrity Commission Committee of the NSW Parliament of the Police Oversight System in NSW in 2006¹ and, most recently, a submission to the McLelland Review of Police Oversight of Critical Incidents in 2013². We also supported the CLC's recommendations for reform put forward in 2012.³

Our view remains consistent with the core argument in those submissions: that 'police reviewing police' is a fundamentally flawed approach for the investigation of critical incidents and alleged misconduct, and is not in the public interest nor in the best interest of the police force. High ethical standards and integrity in the police force and public confidence in the police force and the justice system will only be sustained with the greater transparency and accountability which comes with a high degree of independence in the review and investigation of police conduct in these contexts.

Recent examples of the review of police critical incidents confirm our view that the establishment of an effective system of independent review should be one of the highest reform priorities for the police and justice system in NSW.

We agree there are other efficiency and effectiveness issues, including public confusion as to respective roles, arising from the current system of multiple oversighting agencies. NSWCCL's major concern is, however, the serious problems that arise from the absence of independent investigation of most police critical incidents and of weaknesses in the investigation and oversight of serious misconduct and complaints.

¹ Submission of the New South Wales Council for Civil Liberties to the ten year review by the Ombudsman and Police Integrity Commission Committee of the NSW Parliament of the Police Oversight System in NSW 15 May 2006
http://www.nswccl.org.au/submission_to_the_ten_year_review_of_the_nsw_police_oversight_system_may_2006

² NSWCCL submission to review into Police Oversight of Critical Incidents 11 October 2013 (NSWCCL submission 2013) http://www.nswccl.org.au/submission_police_oversight_of_critical_incidents

³ Included as an appendix in the Community Legal Centres submission to this Inquiry.

Our focus in this submission is to argue the case for reform of this very significant gap in the current oversight system.

While the models referenced in the recent Parliamentary Research Service paper⁴ are acknowledged as somewhat simplistic, NSWCCCL supports a stronger “civilian control” model than provided in the current mix of citizen **review** and citizen **control** elements for NSW.

2. The Review Process

There is now a significant convergence of views from key persons and bodies that the current mechanism for the oversight of police in NSW is not working-including publicly expressed support from the Premier, the Police commissioner, the Police and Justice Minister and the Police Association for reform based on a single oversight body. The terms of reference reflect this convergence of views.

This provides a much needed opportunity to achieve reform around the core issues of independent oversight, effective accountability and public confidence - as well as demonstrated administrative efficiency and legitimate cost effectiveness aspects of the current arrangements.

This gives particular significance to the current review and NSWCCCL is concerned that the review process is not the most appropriate for this important task.

The Legislative Council Select Committee, from which this review arose, found the current oversight system dysfunctional and recommended a further Parliamentary Committee process to explore options for a ‘single, well-resourced police oversight body’. The Premier’s decision to by-pass a parliamentary committee inquiry and go with a review by a previous shadow Attorney-General places the task with a sole person. Regardless of Mr Tink’s general and specific expertise⁵, the timeline is very short and dedicated professional assistance appears to be limited. In consequence (presumably) the consultation process has been limited⁶. NSWCCCL has concerns about the capacity of the review process to thoroughly canvass the views of relevant community organisations, assess available information on current overseas and other state models and design and cost an appropriate model for the NSW context in the available time. While the recent briefing report by the NSW Parliamentary Research Service⁷ provides a useful contextual framework for this review- a proper assessment of other models would require direct probing of the recent experiences of these models and their applicability to NSW. This will not be able to occur within the timeframe.

⁴ *External Oversight of police conduct*: NSW Parliamentary Research Service Briefing paper no 6/2015 June 2015. (NSW PRS Briefing Paper June 2015). The paper cites three models: the internal affairs model; the civilian review model; and the civilian control model. It places the current NSW oversight system as a mix of the civilian review and civilian control model

⁵ NSWCCCL is aware that Andrew Tink does have considerable experience in related review processes: chairing a parliamentary committee review of police complaints system in 1992; co- chairing with Paul Whelan the statutory review of LEPR in 2013 and as a shadow attorney general.

⁶ Mr Tink did agree to meet with a number of interested community groups in June and was flexible about submission deadlines - but we are not aware of any direct invitations to community groups or academics to provide independent input into the review and the review does not have the capacity to hold public hearings.

⁷ *External Oversight of police conduct*: NSW Parliamentary Research Service Briefing paper no 6/2015 June 2015. This paper does not consider the New Zealand model.

The timeframe and the resourcing could suggest the Government may not be concerned about a rigorous review process with strong, independent input to balance the views of the Police Force and the Police Association.

(NSWCCL held similar concerns about the 2013 review of the Police Critical Incidents process by a previous Commonwealth Attorney-General Robert McLelland QC.)

While not an issue for the consideration of this review, we again record our view that reviews of important police and justice issues would be more appropriately conducted by persons with both clear independence from the political process and the government of the day as well as recognised expertise, or by a relevant parliamentary committee or a specialist expert body such as a properly resourced NSWLRC. All such review processes should include serious public engagement.

3. Terms of reference

The NSW CCL believes that the need for an independent, civilian controlled body to investigate critical incidents involving police and serious police misconduct is a paramount consideration. We are concerned that the terms of reference do not give explicit high priority to this reform imperative.

It would be a great mistake and a lost opportunity, if the inquiry resulted in recommendations for a single oversight body largely on the basis of cost effectiveness and simplicity and if this led to the failure to strengthen and properly resource an independent investigative capacity within the system. We note that some of the problems with the current system in relation to the management of complaints would seem to be directly linked to inadequate resources in the Ombudsman's office.

NSWCCL would be strongly opposed to any outcome from this review which did not have as its core, stronger accountability and transparency and an end to 'police investigating police' in relation to critical incidents and serious misconduct.

It would of course be unthinkable for the outcome to, in anyway, decrease the current civilian oversight and investigative roles and powers in the interests of simplicity or cost effectiveness.

4. Independent Oversight

The most significant and damaging gap in the current police oversight system in NSW is the lack of independent investigation of police critical incidents.

The other significant gap is the limited capacity for effective independent investigation of complaints relating to serious misconduct.

4.1. Why reform is necessary

Critical incidents and serious misconduct

The recent history of police investigations of police critical incidents/alleged misconduct in NSW provides persuasive reason as to the need for independent investigation of such matters⁸.

⁸ Appendix 1 lists some of the critical incidents that NSWCCL has considered in recent years which generate this conviction.

In our previous submission to the McLelland inquiry in 2013, we noted examples of flawed investigations and areas for concern in relation to police conduct:

- *'The Police Integrity Commission's report on Operation Calyx and the Ombudsman monitoring of the police investigation into the death of Roberti Laudisio-Curti both revealed the failure of the police force to conduct a thorough investigation.*
- *Several scandals related to the NSW Police Force were highly covered by the media. Corey Barker was assaulted by police officers at Ballina Police Station in September 2011. The involved police officers gave evidence under oath that they only tried to get Mr Barker under control after he assaulted them. CCTV footage proved the police officers lied.*
- *The allegations of police misbehaviour at the 2013 Mardi Gras demonstrates how quickly public confidence in the NSW Police Force can erode if complaints are not dealt with in an independent and transparent manner.*
- *In addition, the Ombudsman's report on "How are Taser weapons used by the NSW Police Force?" provided to the Parliament in October 2012 shows that Tasers can be misused by police officers and can cause serious body injury or death. Between 2008 and 2011, the report identified 80 incidents that involve a breach of the criteria of use⁹.*

In that submission we provided a detailed account of the demonstrated failings in the police investigation of two high profile critical incidents: the Adam Salter Case in 2009 and the Roberto Laudisio-Curti Case in 2012.¹⁰ These cases have been documented and discussed in many contexts and do not need detailed repetition here. Both led to widespread calls for greater independence and transparency in the investigation of police critical incidents.

Subsequent to CCL's 2013 submission, there have been further developments in the Curti case. Following a Coroner's report and a recommendation by the Police Integrity Commission, four police officers were prosecuted: two for common assault and two for assault causing actual bodily harm.¹¹ The magistrate found three officers not guilty and one officer guilty of common assault for misuse of capsicum spray. No conviction was recorded in light of the officer's record of good conduct¹².

Given what the public saw on CCTV and tasercam coverage of the actual incident released during the inquest and the scathing coroner's report¹³ in relation to police conduct, this outcome may be difficult for a reasonable member of the public to understand. It remains a controversial case.

NSWCCL is not suggesting any problem with the magistrate's findings. It is not unusual for there to be differences between coroner's finding in an inquest and magistrate's findings in a criminal case given the different functions and standards of admissible evidence. But we do maintain that, had the initial investigation of the incident been carried out by an independent body and not the police, there would have been less controversy and greater confidence that justice has been done – regardless of the outcome of the prosecution.

⁹ NSWCCCL submission 2013 p 2

¹⁰ Ibid pp.2-4

¹¹ Police Integrity Commission Media Release 20th May 2013; New South Wales Coroner's Court: Curti Decision 14 Nov 2012;

¹² Decision in Curti Case Downing Centre Local Court 16 December 2014.

¹³ "Roberto's death clearly arose from complex and multi-factorial causes, with no confirmed single identifiable cause. Nevertheless, it is impossible to believe that he would have died but for the actions of police. All of the medical experts agreed that his death was not coincidental." The Coroner described the police actions as "thuggish" and involving excessive force, and recommended that five of the officers involved should face disciplinary actions.

Complaints management

Our experience of the complaints management system in NSW through our engagement with members of the public who seek our assistance – and our own occasional direct experience in registering a complaint – is consistent with the views of other community organisations working in this area. The system does not inspire confidence among complainants or the wider community. The perception of police bias is strong. The process is slow and opaque. The Ombudsman’s oversight role is not adequate- possibly in part because of limited resources.

The principle that ‘police should not investigate police’ holds for general complaints- and certainly where the alleged issue is other than minor.

The fact that a surprisingly large number of complaints about misconduct are made by police against police is also a reason for an external and independent investigation process.

NSWCCL supports the inclusion of complaints oversight and investigation where the issue is serious within the single independent oversight body.

4.2. Guiding principles and essential elements

A central task of this inquiry is to provide some detail on a recommended model for police oversight. It is important that the ‘independence’ element of any new system is strongly defined so that police critical incidents and serious misconduct are properly and fairly investigated and public confidence is sustained.

NSWCCL appreciates there are significant complexities and tensions that emerge and must be considered and managed in a large law enforcement system when establishing stronger, independent civilian oversight and investigative powers in relation to police conduct.¹⁴ In our view none of these over-rides the imperative for greater independence and transparency in the investigative and oversight process.

The European Court of Human Rights has identified **independence** as one of five key principles of effective investigation: independence, adequacy, promptness, sufficient public scrutiny and next-of-kin involvement. These principles are sound and have been referenced in many reform contexts. They could provide a useful benchmark for this review.

The European Court has given considerable thought to the necessary elements of ‘independence’ in this context. Dr Graham Smith, consultant to the European Commission for Human Rights summarised the independence principle as:

The investigators or investigative body should have no hierarchical or institutional connection to the police involved in a police-related death and the investigation must be independent in

¹⁴ The pros and cons of the ‘police investigating police’ versus independent external investigation were thoroughly canvassed in the Victorian Office of Police Integrity: **Review of the investigation of deaths associated with police contact – Issues paper** 2010 <http://www.ibac.vic.gov.au/docs/default-source/opi-other-documents-and-papers/opi-issues-paper---review-of-the-investigation-of-deaths-associated-with-police-contact.pdf?sfvrsn=4>

*practice. The European Commissioner for Human Rights supports investigation by a civilian oversight or an independent police complaints body.*¹⁵

The NSWCCCL put a list of criteria for an independent investigative body to the McLelland inquiry. In summary –and with some update- these were:

Status

- statutory independence and a charter based on the principles enunciated by the European Court of Human Rights or similar
- civilian leadership
- a clear broad mandate
- report to parliament
- security of employment within parliamentary oversight

Powers

- mandate to investigate police critical incidents and police misconduct
- a broader definition of critical incidents including any serious injury to persons which is legislated
- oversight of complaints management and power to investigate complaints
- re-investigation of complaints when complainant not satisfied
- able to hold investigations on own initiative when it is in the public interest to do so
- able to interview police officers as they would any member of the public
- findings and recommended disciplinary action to be binding- in that if recommendations not acted on within specified period direction can be issued

Resources and staffing

- adequate funding to fulfil statutory role and objectives
- independent investigative and forensic and other scientific specialist expertise such as to be effectively in control of critical incidents investigations
- investigative staff should not be current NSW police officers -recruitment should be focussed on other states and from overseas bodies with relevant expertise
- Adequate resources to run appropriate training for investigators

Relationships

- protocol to ensure that any police officer who has engaged in serious misconduct and/or is responsible for the death or serious injury of a civilian is referred to the Director of Public Prosecutions. This to occur at conclusion of investigation
 - the police force obliged to notify the independent investigative body of all incidents involving the death or serious injury of a person caused by a police operation. The notification must be as soon as possible in order to ensure that the investigation can be conducted more efficiently.

¹⁵ <http://www.ibac.vic.gov.au/docs/default-source/opi-other-documents-and-papers/opi-issues-paper---review-of-the-investigation-of-deaths-associated-with-police-contact.pdf?sfvrsn=4>

- any member of the public, the coroner, the media, a medical professional or a lawyer should also be able to notify the independent investigative body of such an incident.
- police obliged to co-operate with the independent body's investigations and evidence to be provided as soon as possible
- police officers interviewed under caution to ensure that evidence obtained can be used in legal proceedings

Accountability

- all protocols made public
- findings on all investigations of major incidents and serious misconduct made public (at appropriate time so as not to prejudice coronial or criminal proceedings)
- annual reporting of statistics
- regular independent review against objectives - including satisfaction review

5. A single civilian oversight model

NSWCCL supports the integration of civilian oversight and investigation of police critical incidents, police misconduct and complaints within one independent, civilian oversight and investigative body.

Hopefully this will reduce duplication and inefficiencies and provide easier access- as well as removing the current conflict of interest inherent in police investigating police with the all the consequent negative impact on outcomes and public confidence.

A major and critical task for the review will be to advise on the difficult issue of adequate resourcing of the body – especially in terms of forensic and investigative expertise – in the NSW context. It is an imperative that critical incidents and serious misconduct is directly investigated by the independent body. The need for critical incidents to be investigated quickly– within the so called ‘golden hour’ - poses a particular difficulty in NSW. If reform is to be effective, a way has to be found to protect a high degree of independence and control over these initial investigations. It is critical the review and the Government get the balance right on this core aspect.

5.1 Best practice models

The terms of reference refer to best practice models around the world and note the UK Independent Police Complaints Commission (IPCC). We have previously referenced this body as a possible model, but note the disturbing list of problems that have emerged from reviews since 2013. From the brief account of these reviews provided in the Parliamentary Research Paper it would appear that the IPCC was poorly designed and ‘woefully’ under-resourced for its objectives.¹⁶

The Northern Ireland Police Ombudsman may provide a more relevant and robust model – particularly as it is reportedly both ‘fully-funded and completely independent.’ and has a very positive satisfaction ratings from complainants and police officers.¹⁷

The Parliamentary Research Paper does not reference the New Zealand Independent Police Conduct Authority (NZ IPCA)¹⁸ but there have been informal suggestions that it is an appropriate model for

¹⁶ NSW PRS Briefing Paper June 2015 pp.37-8

¹⁷ Ibid pp 39-43

NSW to explore. It has statutory independence and is a 'crown entity'. It independently investigates serious incidents and complaints. NSWCCCL does not have detailed knowledge of the resourcing or operational effectiveness of this body. We note that the 'most' complaints are referred to police for investigation. Whether oversight by the IPCA in relation to these is effective in maintaining public confidence and a perception of fairness is a critical issue.

The core elements of the IPCA are publicly described as:

Independence

The Independent Police Conduct Authority is fully independent – it is not part of the Police.
'Independence' means that the Authority makes its findings based on the facts and the law. It does not answer to the Police or anyone else over those findings. In this way, its independence is similar to that of a Court.
There are three aspects to the Authority's independence.

Legislative independence

The law requires the Authority to act independently in performing its statutory functions and duties such as investigating complaints and incidents involving death or serious injury.
The Authority's status as an independent Crown entity means that there is no political involvement in its operations.

Operational independence

The Authority is chaired by a serving High Court Judge, and its decisions and actions reflect that judicial independence.
Its investigators independently investigate the most serious complaints and incidents, such as those involving fatalities or allegations of serious misconduct. Investigators also have the power to direct or oversee Police investigations. The integrity of investigators' work is assured through peer review and through oversight from the Manager: Investigations and the Authority Chair.
Most complaints to the Authority are referred to the Police for investigation and resolution. The Authority independently oversees Police handling of these complaints. The form of that oversight depends on the nature of the complaint, but can include independent review or audit of the Police investigation.
The Authority maintains a register of conflicts of interest and has systems in place to manage conflicts when they arise.

The perception of independence

The Authority reports publicly on investigations of significant public interest.¹⁹

The review will need to very closely examine these bodies and their experience and effectiveness against the key criteria and objectives for guidance in developing an appropriate model for the NSW context.

5.2 Investigation of corruption –a query

NSWCCCL supports the integration of civilian oversight and investigation of police critical incidents, police misconduct and complaints within one independent, civilian oversight and investigative body.

¹⁸ <http://www.ipca.govt.nz/>

¹⁹ <http://www.ipca.govt.nz/Site/about/Independence.aspx>

We are, however, uneasy at the investigation of serious and systemic police corruption being included in that body.

The investigative role and expertise required for serious police corruption are quite different from those required for more standard incident and misconduct investigations. Also effective investigation and intelligence gathering in relation to corruption is by its nature covert - whereas the investigation of critical incidents and general misconduct should be transparent. Serious and systemic corruption investigations typically require intensive resourcing and are relatively few in number.

There was merit in the arguments put forward by the Wood Royal Commission to keep the roles separate despite the potential for cost savings and apparent simplicity. They are still relevant. Corruption in NSW is a huge and sensitive issue – even accepting that the NSW police force is today very different from the one investigated by Wood in the 1990s. In our view it would be unwise – and not in the public interest nor in the interest of building police integrity – to make structural/organisational change that may weaken a dedicated and independent focus on combatting police corruption in NSW.

NSWCCL's preference would be for investigation of serious police corruption to be the responsibility of a strengthened PIC or reintegrated into a reinvigorated ICAC with appropriate safeguards in relation to focus and resources. The imperative is that a dedicated anti-corruption role be strengthened rather than diminished.

6. Summary of Recommendations

- 6.1.** The priority for reform of NSW oversight of police conduct is a shift to a system which ensures stronger accountability and transparency and an end to 'police investigating police' in relation to critical incidents and serious misconduct.
- 6.2.** NSWCCL supports the integration of civilian oversight and investigation of police critical incidents, serious misconduct and complaints within a single independent, civilian oversight and investigative body.
- 6.3.** To be effective it is recommended the independent, civilian controlled police oversight body has the following characteristics:

Status

- statutory independence and a charter based on the principles enunciated by the European Court of Human Rights or similar
- civilian leadership
- a clear broad mandate
- report to parliament
- security of employment within parliamentary oversight

Powers

- mandate to investigate police critical incidents and police misconduct
- a broader definition of critical incidents including any serious injury to persons which is legislated
- oversight of complaints management and power to investigate complaints
- re-investigation of complaints when complainant not satisfied
- able to hold investigations on own initiative when it is in the public interest to do so

- able to interview police officers as they would any member of the public
- findings and recommended disciplinary action to be binding- in that if recommendations not acted on within specified period direction can be issued

Resources and staffing

- adequate funding to fulfil statutory role and objectives
- independent investigative and forensic and other scientific specialist expertise such as to be effectively in control of critical incidents investigations
- investigative staff should not be current NSW police officers -recruitment should be focussed on other states and from overseas bodies with relevant expertise
- Adequate resources to run appropriate training for investigators

Relationships

- protocol to ensure that any police officer who has engaged in serious misconduct and/or is responsible for the death or serious injury of a civilian is referred to the Director of Public Prosecutions. This to occur at conclusion of investigation
- the police force obliged to notify the independent investigative body of all incidents involving the death or serious injury of a person caused by a police operation. The notification must be as soon as possible in order to ensure that the investigation can be conducted more efficiently.
- any member of the public, the coroner, the media, a medical professional or a lawyer should also be able to notify the independent investigative body of such an incident
- police obliged to co-operate with the independent body's investigations and evidence to be provided as soon as possible
- police officers interviewed under caution to ensure that evidence obtained can be used in legal proceedings

Accountability


- all protocols made public
- findings on all investigations of major incidents and serious misconduct made public (at appropriate time so as not to prejudice coronial or criminal proceedings)
- annual reporting of statistics
- regular independent review against objectives - including satisfaction review

6.4. The review closely examine the experience and effectiveness of best practice models of police oversight in achieving competent independent investigation and oversight of police and in gaining public confidence in the fairness and effectiveness of the system. It is suggested that the Northern Ireland and New Zealand models may be the most relevant.

6.5. NSWCCCL is of the view that prevention investigation of serious corruption may be more effective if it remains within a dedicated body.

The NSWCCCL hopes this submission is of assistance to the review process and would be very willing to provide further information on any aspect.

Yours sincerely,



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Police Critical incidents

Police critical incidents which NSWCCCL has monitored in recent years.

Case of Rachel Gardner (2013):

- **Facts:** Rachel Gardner sued the NSW Police Force, claiming she was kicked, sat on, handcuffed, pushed against a fence, loaded into a paddy wagon and then dumped at a nearby train station without charge after she was caught without a train ticket on March 13, 2011.
- Miss Gardner claimed that she was forced to the ground at the train station in an unprovoked assault.

- **Court Case:** CCTV footage revealed that Miss Gardner fell face first onto the train platform. According to Miss Gardner's lawyer, the police first claimed that they were acting in self-defence, before changing their defence when it was revealed that the plaintiff had the CCTV footage.
- The policeman responsible for Miss Gardner's fall said that he "controlled her descent to the ground" using an approved procedure (a leg sweep).
- Observing the CCTV footage, the judge found in favour of Miss Gardner.
- He awarded aggravating and exemplary damages totaling: \$243, 591.

- The Judge stated: *"In all the circumstances I prefer the evidence of the plaintiff ... to that of [the policeman] and I find that the injury was occasioned by a deliberate action of [the policeman] which amounts to an assault or, more accurately, a battery or trespass to the person..."*
- *Prior to [the policeman's] arrival the plaintiff was moving freely – while leaving the platform she was limping. "*
- *[The policeman's] actions were vicious and unnecessary but I accept that he did not intend to cause serious physical injury.*

- **Disciplinary Action:** It is unclear if any disciplinary action was taken.

Case of Jamie Jackson Reed (2013):

- **Facts:** On the night of the 2013 Mardi Gras there were two high profile assaults by police on members of the public, footage of which was spread widely on social media.
- Two videos emerged of the events involving Jamie Jackson Reed at approximately 10.00 pm on this night. In the first recording, Mr Reed is seen striking a police officer who punched him in return and Mr Reed kicking out at two police officers who were holding him down.
- The second video shows Mr Reed being thrown to the pavement while he was handcuffed and then stood on by a NSW police officer. A large amount of blood is present on the

pavement as a result of an injury to Mr Reed's head. He also received bruises and abrasions on his torso and limbs.

- **Disciplinary Action:** None
- Only through luck did Mr Reed escape very significant injury when he was violently thrown to the pavement with his arms handcuffed behind him. This good fortune meant that he was not classified as suffering a 'serious injury'. As a result the matter was not classed as a critical incident and not independently investigated.

Case of Police Violence at the SCG (2012):

- **Facts:** Following the posting on [YouTube of footage of an officer repeatedly punching a person](#) at the SCG, senior police were quick to issue statements absolving the officer concerned of wrongdoing.
- It later emerged that the senior officer making the statement did not know that the officer concerned in this incident was his son – meaning he made such statements in the absence of any real information about the matter.
- A further internal investigation again cleared police of any wrongdoing. This incident contributed further to public scepticism about the transparency and accountability of those oversighting critical incidents.

Case of Phillip Charles Bugmy (2011):

- **Facts:** Mr Bugmy was accused of domestic violence and had a history of violence. He was at his grandparent's home. Police arrived and he was ordered to lie on the ground. He instead knelt on the ground, removed his shirt, declared that he was unarmed and then placed his hands on his head. Despite this police yelled at him and then repeatedly tasered him.
- **Court Case:** Local Court Magistrate found that the police used 'excessive force' and that tasing Mr Bugmy was not the action of a 'reasonable officer' with the end result being 'painful and debilitating'. (Police V Phillip Bugmy)
 - See: http://www.alsnswact.org.au/media_releases/19
- **Disciplinary Action:** None: Directly contrary to the findings of the Court, the police's *internal Regional Taser Review Panel* cleared all officers of wrongdoing. No critical incident investigation was launched. In the eyes of the police the injury to Mr Bugmy was not 'serious' enough.

Case of Corey Barker (2011):

- **Facts:** On 14 January 2011 Mr Corey Barker was arrested by local police at Ballina. He was taken into custody and held in the dock at the Ballina police station. Whilst being moved from the dock to a holding cell he was repeatedly assaulted by police.

- The assaults on Mr Barker involved him being thrown against some machinery, thrown to the ground, repeatedly punched and then dragged from one room to another by his arms when his wrists were handcuffed behind his back.
- **Court Case:** The police officers presented statements in the proceedings before the Local Court alleging that any police use of force was minimal and only occurred as a reasonable response to Mr Barker's aggression. They initially said the CCTV footage was unavailable.
- It was only after a separate order was given by the Magistrate that the CCTV video was produced to the Court. It showed clear brutality by the police:
<http://www.youtube.com/watch?v=jO2zQ2GX9UA>. On being forced to review the footage police dropped the charges against Mr Barker.
- **Disciplinary Action:** The Police Integrity Commission made [damning conclusions](#) about what occurred:

The Commission has concluded that Barker did not assault Hill, so that the degree of force used against Barker could not be justified by any assault committed by Barker.

The Commission has concluded that the degree of force to which Barker was subjected was not reasonably required in order for the police to maintain full control of Barker as an arrested person. The degree of force used by the police officers against Barker was excessive.

...
Barker was dragged to a cell in the police station by police officers holding the handcuffs on Barker's hands, head first, on his stomach, with his arms forced high above his head against the natural inclination of his arms. This method of taking Barker to a cell involved excessive force.

The PIC recommended that five police be considered for perjury and related charges.

The absence of third party scrutiny gave the local police apparent licence to corroborate in producing a fabricated version of events that vindicated their actions and falsely condemned a member of the public.

Case of Thomas James 'TJ' Hickey (2004):

Thomas James Hickey was 17, when he was impaled on a fence while attempting to avoid police on a bicycle. There was an outstanding arrest warrant in his name, but police have consistently maintained that the patrol car was searching for a different individual.

Testimony emerged at the time from witnesses claiming that the police car clipped Hickey's bike, propelling him onto the fence.

Coroner's Report (July 2004):

- The Coroner concluded that Hickey "died in the course of a police operation but not in the course of a police pursuit."
- The coroner's report attested that police officers pursued Hickey, thinking him to be another

man, Christopher Carr, a suspect in a case of serious assault and robbery.

- “[It is] common ground that TJ Hickey looked nothing like Christopher Carr, beyond the fact they were both Indigenous Australians,” the report said.

There is ongoing unrest about this case and the disputed facts leading to Hickey’s death. A decade on, there are still calls for a fresh inquiry, [including a recent march in 2014 that commemorated Hickey’s death.](#)

Failures of Internal Investigation

1) The Investigation into the Death of Roberto Curti:

- **Facts:**
- Mr Roberto Curti died while he was being held on the ground by police after being pursued, Tasered, handcuffed, capsicum sprayed and restrained by police.
- Mr Curti’s death was the subject of an internal police critical incident investigation that compiled a brief of evidence for coronial court proceedings. The police investigation was the subject of a review by the Ombudsman’s office.

The Coroner relied on a brief of evidence provided by the police critical incidents investigation: *In the pursuit, tasing (particularly in drive stun mode), tackling, spraying and restraining of Roberto Laudisio Curti, [police] responsibilities were cast aside, and the actions of a number of the officers were just that: reckless, careless, dangerous, and excessively forceful. They were an abuse of police powers, in some instances even thuggish.*

...

Probationary Constable Barling’s wild and uncontrolled use of the drive stun mode suggests that he had no such understanding, despite only recently having undertaken the Taser course. A few of the other Constables seem to have thrown themselves into a melee with an ungoverned pack mentality, like the schoolboys in ‘Lord of the Flies’, with no idea what the problem was, or what threat or crime was supposedly to be averted, or concern for the value of life.

The police launched an internal investigation (By the Police Integrity Commission),

Which was then itself condemned by the Ombudsman (Feb 2013):

- In February 2013 the [Ombudsman’s Office released its review](#) of the police critical incident investigation.
 - Despite the glaring evidence of use of excessive force there was no investigation by the critical investigation team of the use of force. As the Ombudsman’s report noted:
 - *It is extraordinary that not one NSW Police officer seemed to have formed the view that some of the involved officers may have acted inappropriately.*
 - *In our view, the NSW Police Force is abrogating its responsibility to adequately identify and address officer misconduct and improve training and procedures by conducting critical incident investigations*

that set out to achieve nothing more than to investigate the events surrounding the critical incident in order to provide the brief of evidence to the Coroner.

- **Disciplinary Action:** To date it is uncertain if any disciplinary action has been formally commenced against any of the officers by NSW police.

2) **The Investigation into the Death of Adam Salter:**

- **Facts:** On 18 November 2009 Mr Adam Salter was fatally shot by a police sergeant while he was in the kitchen of the home he shared with his father in Lakemba. Mr Salter had been suffering from a serious mental illness for at least 18 months. He had been wounding himself with a knife in the kitchen immediately before he was killed by police.
- A critical incident investigation (internal) was commenced.
- Coronial proceedings commenced. The [judgement of the Coroner](#) was deeply critical of the police actions, the evidence of the police in the coronial hearing and even more damning of the critical incident investigation.
- **The Coroner Found:**
 - The formal police notification issued immediately following the death of Mr Salter (the P79A notice) **was 'simply not true' and senior police knew that was the case when it was issued.**
 - A number of police gave clearly untruthful evidence to the Court and to the police investigators.
 - That **the critical incident investigation was 'inadequate and apparently prejudiced ... chiefly directed, as far as I can tell, to avoid embarrassment to Police.'**
- **Police Integrity Commission Report (June 2013):**
 - was scathing of the police conduct that caused Mr Salter's death, the critical incident investigation and the evidence given by police at both the Coronial hearing and before the PIC. The PIC report:
 - Recommended that four police be considered for criminal charges including perjury, obstructing the administration of justice and giving false evidence to the PIC;
 - Found that the senior officer in charge of the critical incident investigation should be considered for disciplinary action because of the unprofessional and inappropriate manner in which he conducted the critical incident investigation; and
 - Recommended that the critical incident Review Officer should be considered for disciplinary action because of the unprofessional and inappropriate manner in which he conducted the review.
- **Disciplinary Action:** To date it is uncertain if any disciplinary action has been formally commenced against any of these officers by NSW police.